

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	No. 4:10-cr-00459-3
	§	
V.	§	JUDGE KENNETH M. HOYT
	§	
	§	
EFRAIN RODRIGUEZ-MENDOZA,	§	
	§	<i>This is a Capital Case</i>
Defendant.	§	

**JOINT MOTION TO CONTINUE
EVIDENTIARY HEARING AND BRIEFING
FOR *ATKINS* CLAIM**

TO THE HONORABLE KENNETH M. HOYT:

The Government, through its representative, Assistant United States Attorney Jill Stotts, and the Defendant Efrain Rodriguez-Mendoza, through undersigned counsel hereby respectfully requests that the Court grant this request to continue the current scheduling order relating to the Defendant's claim for relief under *Atkins v. Virginia*, 536 U.S. 304 (2002). Reasons follow:

1. On March 11, 2021 the Court entered an order setting dates relating to Mr. Rodriguez-Mendoza's *Atkins* claim. DKT# 619. Pursuant to that order, an evidentiary hearing on Mr. Rodriguez-Mendoza's *Atkins* claim is currently scheduled for October 13, 2021. *Id.* Additionally, the Government's response to Mr. Rodriguez-Mendoza's brief in support of his *Atkins* claim was due on September 1, 2021, and the Defendant's reply was due on September 15, 2021. *Id.*
2. Since the Court's Order, the parties have continued discussions regarding a potential negotiated resolution of this case. To that end, the parties are currently negotiating the terms of a plea agreement that can accompany Mr. Rodriguez-Mendoza's request that the

Department of Justice deauthorize this capital prosecution and withdraw the Notice of Intent to Seek Death. The parties believe that a signed plea agreement will significantly bolster the deauthorization request and its chances of being granted by the Department of Justice. If the terms of a plea agreement are reached and deauthorization is granted, the need for any additional briefing on the *Atkins* claim or an *Atkins* hearing, as well as the need for any additional pre-trial litigation or a trial would be obviated.

3. Although Covid-19 pandemic related delays previously hampered progress, recent discussions between the parties have been fruitful and undersigned counsel expect to submit the deauthorization request to the Government by October 22, 2021. Once submitted, the parties hope to promptly finalize plea negotiations and forward the deauthorization request, along with a signed plea agreement to the Department of Justice for consideration.

4. Accordingly, the parties respectfully requests that the *Atkins*-related proceedings be rescheduled as follows: (1) the Government's *Atkins* Response shall be due on January 7, 2022; (2) Mr. Rodriguez-Mendoza's reply brief shall be due by January 21, 2022; (3) the *Atkins* hearing shall begin on February 21, 2022; (4) proposed findings of fact and conclusions of law shall be submitted within 30 days of the completion of the transcripts for the *Atkins* hearing; and (5) the parties' responses to the proposed findings of fact and conclusions of law shall be submitted within 15 days of the filing of the proposed findings of fact and conclusions of law.

5. The parties will provide the Court a report on the status of the plea negotiations and the deauthorization request by December 10, 2021.

6. This motion is not intended for delay, but rather to allow justice to be done in this complex capital case. The requested continuance will allow the parties time to complete plea negotiations, permit the Government and the Department of Justice time to carefully consider the deauthorization request, and potentially resolve this matter without the time and expense of a lengthy *Atkins* hearing and trial. The proposed schedule is also consistent with undersigned counsel's obligations to provide effective representation under the Sixth and Eighth Amendments. All limits under the Speedy Trial Act continue to be waived by the filing of this motion.

7. Undersigned counsel conferred with counsel for the Government who have joined this request.

WHEREFORE, for the reasons set forth herein, Mr. Rodriguez-Mendoza respectfully requests that the Court grant this motion. (A proposed order is attached.)

Respectfully submitted,

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Attorneys for Defendant
Efrain Rodriguez-Mendoza

Dated: October 8, 2021

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2021, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on counsel of record for the above captioned case.

/s/ Victor J. Abreu

Victor J. Abreu